

Elaine Spencer
Editor

Joint Committee on Administrative Rules
Illinois General Assembly

700 Stratton Bldg. Springfield IL 62706
217/785-2254 ilga.gov/commission/jcar

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.

New Rules

■ HOME HEALTH SERVICES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Home Health, Home Services, and Home Nursing Agency Code (77 IAC 245; 38 Ill Reg 23298), effective 12/10/15, clarifying the differences between the various types of agencies regulated under this Part and delineating their respective duties and obligations. (A "home nursing agency" provides services that can only be performed by individuals licensed under the Nurse Practice Act; a "home services agency" provides non-medical services such as assistance with housekeeping and other daily living activities.) The rulemaking expands the definitions of client records and clinical notes to include electronic (as well as written) documents and allows the use of electronic signatures; defines an employee as a person working

for another person or a company under an express or implied contract that gives the employer authority to determine wages, salary or other payment (formerly, an employee was defined as a person for whom an agency pays withholding taxes); and clarifies that a placement agency (which assists nurses and home care workers in finding clients for whom to work) does not provide client support or management of services. Placement agency contracts and client service contracts are limited to no more than 12 months, and placement agencies may charge only a one-time fee for their placements. A home nursing agency whose manager is not a registered nurse or advanced practice nurse must hire a full-time supervisor who is an RN and is available at all times during the agency's operating hours. Home services

(cont. page 2)

Proposed Rulemakings

■ HEALTH FACILITIES

The HEALTH FACILITIES AND SERVICES REVIEW BOARD proposed amendments to Health Facilities and Services Review Operational Rules (77 IAC 1130; 39 Ill Reg 16277) implementing recent statutory changes. The rulemaking adds Specialized Mental Health Rehabilitation Facilities (SMHRFs) and skilled- or intermediate-care facilities for the developmentally disabled (ICF/DDs) to the list of facilities subject to the Certificate of Need (CON) process. Fees for CON permit applications are increased from \$2,500 to \$5,000 for projects costing less than \$1.7 million and from 0.22% to 0.30% of the estimated project cost (subject to an existing cap of \$100,000) for projects costing \$1.7 million or more. The fee for an exemption application is increased from

(cont. page 3)

NEW RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.

PROPOSED RULES: Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.

PEREMPTORY RULES: Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.

■ Designates rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS: Submit mail, email or phone calls to the agency personnel listed below each summary.

RULE TEXT: Available on the Secretary of State (www.cyberdriveillinois.com) and General Assembly (www.ilga.gov) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

New Rules

(cont. from page 1)

workers must report observations of client functioning and any changes to a person designated by the client (currently, to their supervisors or employers only). Home services workers may provide bathing assistance only if they have been trained to give bed or sponge baths, the client or his/her representative is able to participate in or direct the process, and the agency has conducted an evaluation of the worker's competency to perform bed baths. Services performed by a licensed practical nurse must be performed under the direction of an RN. Occupational and physical therapists and their assistants, as well as speech-language pathologists and audiologists, may only perform services within their respective scope of practice under their profession's Practice Acts; they are no longer authorized to perform tests or evaluations or to prepare treatment programs. The rulemaking also requires licensed home services and home nursing agencies to notify DPH of an intent to sell or change ownership at least 45 days in advance, defines the transactions that constitute a change of ownership, and states when such transactions require issuance of a new license. Applications for renewal of a license must include information regarding the number of clients admitted and discharged from service and the number of clients over age 65 that were served

during the preceding year. Applicants who seek dual licensing for both a home nursing or home services agency and a placement agency must operate the placement agency as a separate entity from the service agency. Agencies licensed to provide both home health and home services must provide separate client contracts for skilled medical (nursing) services and for non-medical services. Other provisions include minimum requirements for third-party contracts with home nursing and home services agencies; requirements for reporting allegations of abuse or neglect by a placed worker to a placement agency; established in the contract. Changes since 1st Notice clarify that one full-time person may serve as manager of an agency licensed as both a home health and home nursing agency; clarify the scope of practice for speech-language pathologists and audiologists; and stipulate that records must be kept for a minimum of two years beyond the last date of service, in either hard copy or electronic format, and that faxed copies may be used under certain conditions. Those affected by this rulemaking include home health agencies, home services agencies, placement agencies, and their clients.

Questions/requests for copies: Elizabeth Paton, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

HOSPITALS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an amendment to Hospital Services (89 IAC 148; 39 Ill Reg 10334), effective 12/14/15. An identical emergency amendment effective 7/10/15 through 12/6/15 appeared in the *Illinois Register* at 39 Ill Reg 10453. The amendment terminates Medicaid Facilitation and Utilization Payments to 5 hospitals for dates of service on and after 7/1/15 (the original sunset date was 7/1/18).

Questions/requests for copies: Mollie Zito, HFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

BHE INFORMATION

The BOARD OF HIGHER EDUCATION adopted amendments to Public Information, Rulemaking and Organization (2 IAC 5050; 39 Ill Reg 16387), effective 12/9/15, updating the agency's mailing address; changing the minimum number of Board meetings to four times per year; adding the statutory definition of a quorum and provisions regarding motions for specific items; and updating the staff organization chart.

Questions/requests for copies: Karen Helland, BHE, 1 N. Old State Capitol Plaza, Suite 333, Springfield IL 62701-1377, 217/557-7358, fax 217/782-8548, e-mail: helland@ibhe.org.

Proposed Rulemakings

(cont. from page 1)

\$2,500 to \$5,000 and for a permit renewal application from \$500 to \$1,000. A requirement that HFSRB notify applicants in writing if they have not yet paid the full application processing fee is removed (HFSRB will continue to notify applicants of outstanding fees by other means). Capital expenditure thresholds that determine whether a project requires a permit are adjusted for inflation (from \$12.2 to \$12.8 million for hospitals, \$6.9 to \$7.2 million for long term care facilities, and from \$3.2 to \$3.3 million for all other applicants). Projects that HFSRB may exempt from its permitting requirements now include discontinuation of any health care facility or category of service other than county nursing homes or facilities maintained by the State or State agencies. Applicants seeking an exemption for a change of ownership may submit key terms of the transaction to HFSRB in place of the entire final transaction document, but the exemption will be invalid if the change of ownership is not

completed according to those terms. The notice by publication period for change of ownership applications is reduced from 3 days to 1 day and applicants must pay the cost of publication. Other provisions of this rulemaking concern the Board Chair's authority to grant exemptions for change of ownership; deadlines for submitting financial commitment reports; and accrual of fines for permit holders who fail to comply with post-permit reporting requirements. Hospitals, long-term care facilities, and other facilities subject to the HFSRB permitting process are affected.

Questions/requests for copies/comments through 2/10/16: Jeannie Mitchell, HFSRB, 69 W. Washington, Suite 3501, Chicago IL 60602, 312/814-6226, Jeannie.Mitchell@illinois.gov

DHS REPEALER

The DEPARTMENT OF HUMAN SERVICES proposed repeal of the Part titled Lekoteks (89 IAC 899; 39 Ill Reg 16381) because the provisions of the Disabled

Persons Rehabilitation Act that implemented the Lekotek program (a network of resource, training and counseling centers for special needs children and their families) were repealed by Public Act 99-120.

Questions/requests for copies/comments through 2/10/16: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

Peremptory Rule

CONTROLLED SUBSTANCES

The DEPARTMENT OF HUMAN SERVICES adopted a peremptory amendment to Schedule of Controlled Substances (77 IAC 2070; 39 Ill Reg 16482) effective 12/17/15, adding the chemical formula for Eluxadoline to the list of controlled substances in accordance with federal Drug Enforcement Administration rule.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

Joint Committee on Administrative Rules

Senator Bill Brady
Senator Karen McConaughay
Senator Matt Murphy
Senator Don Harmon
Senator Tony Muñoz
Senator Ira Silverstein

Representative Greg Harris
Representative Lou Lang
Representative David Leitch
Representative Ron Sandack
Representative André Thapedi
Representative Michael Tryon

Vicki Thomas
Executive Director

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at the Committee's January 13, 2015 meeting.

OFFICE OF THE ATTORNEY GENERAL

Attorney General's Procurement (44 IAC 1300; 39 Ill Reg 13542) proposed 10/16/15

DEPT OF FINANCIAL AND PROFESSIONAL REGULATION

Veterinary Medicine and Surgery Practice Act of 2004 (68 IAC 1500; 39 Ill Reg 12677)
proposed 9/18/15

Certified Veterinary Technicians (68 IAC 1505; 39 Ill Reg 12699) proposed 9/18/15

HEALTH FACILITIES AND SERVICES REVIEW BOARD

Specialized Mental Health Rehabilitation Facilities (SMHRFs) (77 IAC 1126; 39 Ill Reg 10577)
proposed 7/31/15

DEPT OF HEALTHCARE AND FAMILY SERVICES

Medical Assistance Programs (89 IAC 120; 39 Ill Reg 1403) proposed 1/23/15

DEPT OF AGRICULTURE

Diseased Animals (8 IAC 85; 39 Ill Reg 14044) proposed 10/30/15

Illinois Dead Animal Disposal Act (8 IAC 90; 39 Ill Reg 14061) proposed 10/30/15

Swine Disease Control and Eradication Act (8 IAC 105; 39 Ill Reg 14078) proposed 10/30/15

Animal Disease Laboratories Act (8 IAC 110; 39 Ill Reg 14089) proposed 10/30/15

Meat and Poultry Inspection Act (8 IAC 125; 39 Ill Reg 14101) proposed 10/30/15

STATE BOARD OF EDUCATION

Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 39 Ill Reg 13595)
proposed 10/16/15

Programs for the Preparation of Principals in Illinois (23 IAC 30; 39 Ill Reg 13210)
proposed 10/2/15

Health/Life Safety Code for Public Schools (23 IAC 180; 39 Ill Reg 13214) proposed 10/2/15

Reading Improvement Program (23 IAC 260; 39 Ill Reg 13246) proposed 10/2/15